(Testimony of Milton R. Evans.)

bottom, and some from one side, and some from the other, and grade those eggs for interior and exterior condition and quality before the candle, and visually by daylight, and record our findings on a report form to be submitted as a report of our examination of those eggs. [2504-5]

Q. Now, in your report would you express an opinion of their quality or condition? In other words, the percentage of——

A. Our usual practice was to indicate the percentage of each grade present.

Q. It was not a practice to express an opinion on your report of the ultimate grade?

A. If there was some question as regards the quality of the egg there is a provision at the bottom of the page for remarks.

Q. Is that the practice that you uniformly followed in the plant of Nye & Nissen?

A. Generally speaking, I would say yes.

Q. On those occasions you would go into that plant with assistants, or you would go in as the junior officer, is that correct? You seldom went in alone? A. That is correct.

Q. Every instance you would candle for quality 100 eggs, that is 5 per cent, is that right, of the cases—I mean 100 cases of eggs?

A. 100; we would examine at least five; the minimum was five or more.

Q. Assuming that, that would have been stacked up in four trays, three trays of 30 and the others on

(Testimony of Milton R. Evans.)

the floor, you would select those cases, would you not?

A. We would designate them.

Q. You would select them in whatever method that you might designate, so the cases selected would be representative of the lot?

A. That was our intent, yes. [2506]

Q. That was always your purpose?

A. That is correct.

Q. Then you would go through the candling of the eggs before the candling light and the examination of the eggs in the sunlight?

A. I wouldn't say sunlight.

Q. I thought you did say——

A. In the daylight.

Q. Well, I assume every day is like today. At all events, you looked at them in the candling booth and you looked at them on the outside?

A. Yes.

Q. In the candling of eggs in a plant like that, one of the first things that you do is to select eggs as nearly as possible to be representative of the lot?

A. That is correct.

Q. When you were down on the waterfront, Major, you did not do that, did you?

A. That was my intent, yes.

Q. You would have, for instance, 14 cases of eggs that were unmarked, and maybe 50 or 60 cases that were stamped, and you would take an equal number of the unstamped eggs as you would the Department of Agriculture stamped eggs, wouldn't you?

(Testimony of Milton R. Evans.)

A. Well, I would say that would depend on the location of the eggs.

Q. Isn't it a fact, Mr. Magee and Mr. Johnson on some of these occasions already had the cases out there for you to inspect? A. No, sir.

Q. Did you, in each instance, pick out the cases you wanted to inspect?

A. As I recall, I selected the cases for examination. [2507]

Q. You picked the samples? A. Yes.

Q. Are the shipments that you have testified to here in the courtroom the only shipments of eggs that you inspected on the waterfront in the months of April and May?

A. They were not.

Q. How many other ships did you go on?

A. I couldn't give you an exact figure, but I would say all together in excess of 30.

Q. Were they all Nye & Nissen eggs, presumably? A. Presumably, as I recall.

Q. When did you start that work?

A. Well, I believe it was about the middle of April, the forepart or the middle of April.

Q. When did you stop?

A. I believe in the latter part of May.

Q. Have you any of those sheets with you?

A. I don't have them in the courtroom.

Q. Have you got them?

A. I have them in my possession.

Q. Do you remember the name of the ships involved?

(Testimony of Milton R. Evans.)

A. Well, there was the Mary Bickerdyke; I don't recall the names of the rest of them. There were some of them, a couple of them with the word "Victory" in their names. That is the only one I think of offhand.

Q. Of the 21, in addition to the nine you mentioned, is that really the best your memory will do for you on the names of the other ships?

A. That is true, unless you would like to give me more time to try to think of more; I think perhaps I could scare up a few more. [2508]

Q. In connection with the nine ships that you have referred to here, is there a single one of those ships, Major, where the eggs presumably, according to any record, were delivered after the 13th of May of 1944?

A. Will you repeat that? I don't think I got it clearly.

Q. You have testified to the result of your inspections and examinations of eggs on the waterfront, starting on the 15th of April, and it ran on until the latter part of May.

Mr. Pratt: I think that is a mistake.

Mr. Faulkner: Pardon me?

Mr. Pratt: I think the ones he testified to commenced with the 29th of April, did they not?

Mr. Faulkner: No. I am stating the record correctly.

Q. Your services started around the 15th of April and you continued until the latter part of May?

(Testimony of Milton R. Evans.)

A. As I recall that, that is approximately correct.

Q. Do you know from your own memory whether you examined eggs on any of the nine ships that have been referred to here at any time where the delivery to a ship was after May 13, 1944?

A. After May 13th?

Q. Yes.

A. As I recall, one of them was on the 23rd, that we looked at, with an Agricultural stamp only about two or three days prior to that.

Q. 23rd of May?

A. As I recall, I think there was one on the 29th that was delivered only a couple of days or three days [2509] before that.

Q. Is that the James Oliver?

A. That is the vessel I had in mind.

Q. James Oliver.

A. That is the last ship that sticks in my mind.

Q. That was obvious to you a ship's store delivery, I mean a port feeding delivery?

A. Well, no, I wouldn't say obvious to me. It was not a quantity that would indicate——

Q. That was a delivery of eight cases of eggs. Do you know of any other other than the James Oliver?

A. Well, the Cape Breton, I believe, was subsequent to the 15th.

Q. The Cape Breton. The delivery date, according to your memorandum, was May 10th.

A. Well——

(Testimony of Milton R. Evans.)

Mr. Pratt: The 11th.

Mr. Faulkner: Date of delivery is May 10th.

Mr. Pratt: The inspection date is May 11th.

Mr. Faulkner: I said the date of delivery, Mr. Pratt.

Q. Starting from the 13th of May, how many ships did you go to after the 13th of May?

A. I have to check my record of those visits to recall those now.

Q. And you have them here in the building, have you? A. That is correct.

Q. Were you working every day on this assignment?

A. No; there were some days that I did not work.

Q. In other words, would you be requested to come down by the agents?

A. That is correct. [2510]

Q. Mr. Johnson, here, and the man sitting next to the Colonel, Mr. Magee?

A. That is correct.

Q. Which man would you usually see, one or both?

A. Well, it would just depend on which one would call me.

Q. In respect to the practice in the Army of the distinction between—withdraw that.

Are you familiar with the regulations of the Department of Agriculture? A. I am.

Q. What period of time is a certificate of the Department of Agriculture good for in the months

(Testimony of Milton R. Evans.)

of April and May in relation to fresh eggs; how long does it continue, do you know?

A. I don't know exactly, as far as that is concerned. I thought you were referring to their regulations as far as standrads and grade go. I am not entirely familiar with the details of Agriculture inspection routine.

Q. Well, you are familiar with the details of the regulations concerning the candling and determination of quality?

A. Grades, weights and quality of eggs of the Department of Agriculture.

Q. Into what category as to indexes of values is a grade AA egg divided?

A. Indexes of value?

Q. Yes.

A. I do not understand that question.

Q. You don't understand that in connection with the Department of Agriculture rules and regulations and terminology?

A. Well, there is a regulation covering the breaking of each [2511] of the grades down into number grades, the same as Procurement grades are broken down for AA. There are U. S. Special No. 1, No. 2, No. 3, No. 4. The same is true of the other grades.

Q. Do you know what a Special egg is?

A. Well, it would be designated as a Special, and now called U. S. AA.

Q. In other words, you are talking about expressions such Procurement I and Procurement II,

(Testimony of Milton R. Evans.)

and III, and IV. I am talking about a AA egg, U. S. Department of Agriculture AA egg. Into how many classifications as to quality is it recognized that an AA may be broken down into?

A. You mean a case of AA's?

Q. No, an individual—the quality is AA.

A. Of an individual egg, you mean?

Q. An individual egg or a case of eggs, in determining that quality I want you to tell me, if you know, if you understand the use of the word, what are the indexes of values, or how many are there in relation to an AA egg?

A. I believe I gather what you are getting at but you say both a case of eggs or an individual egg. They are entirely different. The index of value of a case of eggs or one egg—the quality of one egg. I presume you refer to, as regards the quality, the appearance and the yolk. Am I right?

Q. I think you are?

A. As to quality, the appearance of the white, condition, and appearance of the shell.

Q. Into what classification has the Egg industry classified [2512] or valued the quality that goes to make up an AA egg?

A. Apportioning them for value?

Q. Yes. I will withdraw it.

What are the index values of an AA egg as used in the egg industry?

A. As I have described them to you, that is the way the Department of Agriculture specifies the quality of an egg with those factors.

(Testimony of Milton R. Evans.)

Q. Has every AA egg the same index value?

A. As far as determining its quality, yes; as far as its actual value, no. There will be variations.

Q. Into how many classes do they divide——

A. As far as placing a value indication on them, I am not familiar.

Q. Are you familar, if I asked you the same question in relation to an A egg, are you familiar with that?

A. If it were put to me in the same manner you just specified I wouldn't understand it.

Q. And the B egg? A. Same.

Q. C? A. Same.

Q. In determining the quality of these eggs from which you testified relating to the various ships and your use of these documents, your determination was based entirely on the candling?

A. Not entirely. I broke out some eggs for my information and for the information of the agents who were with me.

Q. Is this a candling record, or is this an egg-breaking record? [2513]

A. That was a candling record substantiated by breaking.

Q. I mean the record of the breaking would be included in the candling you have——

A. They are included, but not identified individually as such.

Q. At all events, these remarks on these papers

(Testimony of Milton R. Evans.)

relate to a classification as the result of candling?

A. That is correct.

Q. When you classify a particular egg as an AA egg, did you do it on the basis that there was only one index value to an AA egg?

A. I would consider all factors present. Only one of those factors being present would knock an egg down, a case down.

Q. Can you, to be precise, tell me the difference between an AA 2 and an A 2½ in the egg industry?

A. I cannot on that designation. [2514]

Q. Now, in April and May of 1944, the work that you were performing for the United States Army entailed the purchase of large quantities of eggs, isn't that correct? A. That is correct.

Q. And in addition to the Department of Agriculture rule certain practices were established by the Veterinary Corps of the United States Army isn't that right?

A. In part by the Veterinary Corps and in part by the Quartermaster Corps.

Q. I mean governmental agencies. Now, on the subject of deliveries where an inspection has been made at the point of origin I will ask you, Major, if it was not the uniform practice of the United States Army at the very time that you were examining eggs on the waterfront for these Department of Justice men, for the Army to uniformly accept at the point of delivery eggs at least one grade lower than the inspection at the point of origin?

A. If it were stipulated in the contract, which

(Testimony of Milton R. Evans.)

it usually was; particularly provisions for that particular purchase would be designated as to what the eggs must grade at the time they were delivered.

Q. And it did not make any difference whether they were delivered to the Army in a carload or a trainload or a truckload, did it?

A. I beg to differ that it did. It would be specified in the contract, and I believe that it is. I would have to have a copy of the purchase order to indicate. [2515] However, the policy established in trainload deliveries across the country, which this was established for, provided for consideration whether it was a car lot of eggs or whether it was a small delivery. That was the purpose of it.

Q. Eggs were delivered to the Army under contract, weren't they? A. They were.

Mr. Pratt: If the Court please, the testimony of this witness is in regard to the delivery of eggs to the War Shipping Administration and not to the Army.

Mr. Faulkner: But the Army inspected them.

Mr. Pratt: It makes no difference. The question is irrelevant to the present inquiry because it does not relate to the subject, namely, the delivery of eggs to the War Shipping Administration. He is talking about Army deliveries.

Mr. Faulkner: It is, of course, distasteful to Mr. Pratt, but even so——

Mr. Pratt: If your Honor please, that character of remark is entirely improper, it seems to me.

(Testimony of Milton R. Evans.)

Mr. Faulkner: Mr. Pratt does not make a legal objection to your Honor; he makes a speech.

Mr. Pratt: I am making an objection and I do make an objection.

Mr. Faulkner: All of these records show that the vendor of eggs may deliver to the War Shipping Administration—these are the written records that came in in the early part [2516] of this trial—eggs inspected by the Department of Agriculture, and the delivery out of eggs inspected by them within a certain period of time are acceptable at the point of delivery. We want to establish from this witness that it was the uniform practice in purchasing for the armed forces that eggs graded at the point of origin at one grade were acceptable at the point of delivery at another grade, and when I establish that, I then want to know from this witness if these eggs were going to the Army, what grade would he give them.

Mr. Pratt: That is beside the question.

Mr. Faulkner: Your Honor has permitted evidence to go in with the suggestion that it goes to the weight; in other words, eggs are delivered, we will say, on Ship A six days, seven days, three days, two days after inspection. Now, at the same time that was being done the Army recognized that if you took eggs from Nye & Nissen's plant in Petaluma and took them across the street to the ice house that you could deliver AA Eggs over there as A Eggs because of the deteriorating qualities existing in the egg and the lapse of time between

(Testimony of Milton R. Evans.)

the inspection and the delivery? We are certainly entitled to show to the Jury on the examination of a man involved that, after all, they have finished his examination and all that they have established is the quality of the egg at that time and not one word as to the quality of the egg when it was in the plant of Nye & Nissen, and I submit that on this field it is very [2517] relevant.

Mr. Pratt: These eggs were not delivered to the Army. They were delivered to the War Shipping Administration, and I submit it has nothing to do with this particular case.

Mr. Faulkner: Q. Major, did you assume by that question I was referring to the eggs that you candled down on the waterfront?

A. No, I did not.

Q. Mr. Faulkner: In other words, that is a preliminary question to this subject which I am entitled not only to develop but to fully develop.

The Court: There is nothing before the Court. Proceed.

Mr. Faulkner: Q. Is it not a fact that at the very time you were down inspecting these eggs for Mr. Magee and Mr. Johnson it was the uniform practice of the Army to provide in the acquirement of eggs from the vendors in this locality that if the eggs had a grade at the point of origin, it would be acceptable at the point of destination at least one grade lower? Wasn't that the uniform practice indulged in by the Army at that very time?

(Testimony of Milton R. Evans.)

Mr. Pratt: To that I object because it has nothing to do with this case.

The Court: I will allow him to answer. The objection is overruled.

The Witness: As I say, it was stipulated in the contract whether it would or would not, and generally speaking it was [2518] provided for by the Army. But there was no abstraction of that permission from the Department of Agriculture regulations.

Mr. Faulkner: Q. I understand. In other words, Major, is this not correct, that in Army purchases you have two inspections: One at the point of origin and one at the point of delivery?

A. Correct.

Q. While in the Department of Agriculture, from the studies you have made, you have a different procedure, and under that a Department of Agriculture's certificate of inspection is presumably good for a period of time, which I think you said you did not know, but you know it is good for a given period of time, isn't that right?

A. For a few days. As I recall, I had direct contact with that situation in that the Department of Agriculture does on some occasions provide for the same type of inspections by having an inspector at the destination. That occurs at the Naval Supply Depot at Oakland, California, and I do know that the inspector there has not always honored the original inspection report made by the Department of Agriculture.

(Testimony of Milton R. Evans.)

Q. But in the ordinary course of the tendering of eggs to the Governmental agencies where the Department of Agriculture is involved, it was uniformly the practice—it was ordinarily the practice to accept eggs that had been graded within a certain period of time prior to delivery, isn't that right? A. That is true.

Q. So the question of quailty and point of delivery ordinarily [2519] does not arise in Department of Agriculture deliveries, isn't that true, Major?

A. I have had occasion to know that it does.

Q. I say ordinarily.

A. I presume you could say it was the exception to the rule where they did not.

Q. The exception would be when they would go down and inspect at the point of delivery, isn't that right?

A. That is correct, if there were more than a reasonable amount of deterioration.

Q. But they always have the privilege to inspect at any time, or on the way, isn't that right?

A. I presume that they do.

Q. And that is true of the Army, too?

A. No, we have designated places that we are permitted to conduct the inspection. They are specific.

Q. I am going to ask you, Major, if you do not mind, to follow with the photostats and I will use yours. A. All right.

Q. You made an examination in the month of

(Testimony of Milton R. Evans.)

April, 1944, aboard a ship called the Cape Charles, am I correct? A. That is right.

Q. About how many ships had you been on before that with Mr. Magee and Mr. Johnson before you got on board the Cape Charles, do you remember?

A. Not distinctly. I would estimate six or eight.

Q. In respect to that particular ship, you made a record there, and it says that some of these cases had a United States Department of Agriculture stamp dated April 27, 1944.

A. Correct. [2520]

Q. Am I correct in that? A. Yes.

Q. Just to clear the record up, you will notice it says, "Four are not stamped." Did you put that in at the same time, Major, or later?

A. No, I put it in at the time we were on the vessel.

Q. When you left the boat was everything written there except the Colonel Hand writing, "See Evans"?

A. As I recall it, was, or immediately thereafter, either in the vehicle going home, or the following day.

Q. I mean, for instance, the additions, here, and the percentages. Did you work those out on shipboard, or did you take the figures back and then work them out?

A. Ordinarily I would do it on the vessel or in the vehicle.

Q. On that particular ship, Major, there were

(Testimony of Milton R. Evans.)

three cases which did not bear a stamp, is that right? A. That is correct.

Q. Is that the first time you had come in contact with any cases on any of the ships that you had examined that did not bear an Agricultural stamp?

A. I would have to check my records to answer that.

Q. Disregarding those three cases, you did have a case there that bore an Agriculture stamp, am I correct in that? A. Correct.

Mr. Pratt: Which boat are you talking about?

Mr. Faulkner: The Cape Charles.

Mr. Pratt: There were four. [2521]

Mr. Faulkner: No, I say there was one that was not stamped.

Mr. Pratt: You made the remark there were three that were not stamped; instead of that there were four. I think you misspoke.

Mr. Faulkner: (Indicating): 1, 2, 3. I can't examine the witness and have my mental processes jarred with Mr. Pratt's.

Q. You described three cases that were stamped and one not stamped, is that correct?

A. That is true.

Q. Major, no egg vendor sells to the Army or to the Department of Agriculture a label, does he?

A. Well, I presume that the case and its appendages become the property of the person who buys the product.

Q. They get the label?

(Testimony of Mifton R. Evans.)

A. They throw that in free, I suppose, if that is what you mean.

Q. You have seen many cases where they got a lot of merchandise, isn't that right, where they have various companies' labels on them?

A. That is true.

Q. In other words, the label on a case is meaningless to the Governmental agency buying, isn't that right?

A. Well, as far as the Army is concerned, as long as they were marked for their quality, that is what they are concerned with. We do not require labels.

Q. That is right.

A. However, a lot that is uniform, covered with freshly-applied clean labels, is presumed to be the label [2522] of the person delivering.

Q. But that does not affect your candling of the eggs, does it? A. Not a bit.

Q. In other words, if you go into the plant of Nye & Nissen and they tendered you eggs and they had "Poultry Producers" label on, Grade AA, Nye & Nissen label on, Mediums, Brown labels on, Blue labels on, and they said, "There is a quantity of large AA eggs," and they tender them to you, you would grade the eggs, I expect, on the basis of your grade or inspection, is that right?

A. Providing they were indicated as being the quality represented one way or the other by a label or a stencil.

Q. That is correct. In other words, when you

(Testimony of Milton R. Evans.)

are dealing with Governmental agencies, the vendor is not dealing with his label, is he?

A. You mean he is not obligated to place a label on it.

Q. That is right, and also the label may have been on the case and it has been used four times in a row, and each time the case has been used a different type of label went onto the eggs, isn't that right? A. It is conceivable.

Q. Every case that you examined on the Cape Charles was an old case, wasn't it?

A. I have it marked as being used cases. They may have been used once.

Q. That is what your record showed?

A. That is right.

Q. That those were used cases, part of them wood and part of [2523] them fiber, isn't that right? A. Correct.

Q. Do you remember whether the Department of Agriculture stamp appeared on a wood or a fiber case? A. That I can't recall.

Q. Now, if you merely took the case of eggs that was supposed to have had the Department of Agriculture stamp, if those eggs had been sold to the Army as AA's, would you have accepted them on the Cape Charles at the time you inspected them?

Mr. Pratt: I object to that, if the Court please. Again, he is talking about this hypothesis of "If these eggs had been offered to the Army." That is not the case here. We are talking about eggs offered to the War Shipping Administration.

(Testimony of Milton R. Evans.)

Mr. Faulkner: No, your Honor, we are not talking about that. We are talking about an effort of the Government to try to prove quality as a pre-existing time from an examination at a subsequent time, and I think that it is essential to get a clear picture from this witness that ordinarily those eggs which grade A, if they had graded AA at the point of delivery, would have been accepted for use in the armed forces under Army regulations based upon experience, not as fulfilling the order. Now, each time Mr. Pratt puts one of these sheets on the Major's lap he then stood up to the jury and he would read one of these invoices, and he would first get the grading on the ship, and then he would read the grading on the invoice. The jury, much against my idea of the law, your Honor, is supposed to take a subsequent event, and from that subsequent [2524] reach a conclusion of what quality eggs were involved in the Cape Charles. The court has admitted this evidence for the Government, as I understand your ruling, and it is for them to take this evidence, after delivery, and determine whether that is a false invoice, and I say it is relevant to establish from that witness that in each one of these invoices under the practice and knowledge he had of the egg business, under the regulations of the Army, that that was an acceptable delivery. Therefore, under the regulations of the Department of Agriculture, any inspection within a certain period, which we will establish, any quantity of eggs inspected within, I think the

(Testimony of Milton R. Evans.)

period is, 21 days, may be tendered to the vendee, and that could not be a false invoice if the evidence established that uniformly and ordinarily in the egg business at that time, in the months of April and May, eggs are accepted at the point of delivery at a lower grade than at the point of origin.

Mr. Pratt: And it is all predicated, this question, upon what the Army would do and what Army regulations——

Mr. Faulkner: I will build a further foundation.

Mr. Pratt: How they would control the situation. That is not the issue here, at all. The issue is the question of false invoices to the War Shipping Administration in connection with these eggs that were testified to by the witness.

Mr. Faulkner: Your Honor——

Mr. Pratt: It has nothing to do with Army regulations [2525] or Army contracts.

Mr. Faulkner: Your Honor, to illustrate this, an invoice is prepared, we will say, on the 1st of May. Certificates of inspection—they are not in evidence—but we know certificates of inspection went to these various ships from the Department of Agriculture. I had them all marked. The dates appear on these sheets. The question for this jury to determine is whether the firm of Nye & Nissen were entitled to bill those goods that way, and I think it might be well to lay a further foundation to establish from the Major, here, that the largest buyer of eggs I imagine in the world was the United States Army and their Quartermaster Center in the

(Testimony of Milton R. Evans.)

months of April and May, and if they established a practice that you take some eggs from that building there across the street and take them at a full grade at least lower it would be relevant evidence for this jury to use in determining whether those are or are not false invoices.

The Court: Do you wish a ruling?

Mr. Faulkner: Yes, your Honor.

Mr. Pratt: May I say one word? So far as this particular invoice is converned to the Government relating to a delivery to the Cape Charles, the invoice recites the fact, "Inspected by WSA." There is no inspection certificate in evidence in this case relating to that shipment. None whatever. It does not exist. [2526]

Mr. Faulkner: Of course that is right, because I had to take them off the desk, practically, and demand them, and I marked them for identification. We haven't had the opportunity, your Honor, to do that. But if you would like to take a look at Defendants' Exhibit U, Mr. Pratt, for identification——

The Court: I think you had better check the record on both sides. I will excuse the jury. It is now twelve o'clock. Two o'clock this afternoon.

(Thereupon an adjournment was taken until 2:00 o'clock p.m., and in the absence of the jury the court and counsel for the respective parties discussed the question and the objection.) [2527]

Afternoon Session, 2:00 o'clock p.m.

The Court: You may proceed. In order to have a record, I will sustain the objection on the ground the proper foundation has not been laid.

Mr. Faulkner: Yes, your Honor.

MILTON R. EVANS,

recalled.

Cross Examination (Resumed)

Mr. Faulkner: Q. Major, on or about the 29th of April, 1944, you made an inspection of certain cases of eggs on board the Cape Charles; is that correct? A. Yes, sir.

Q. Among the cases that you inspected at that time was—rather, of the four cases that you inspected, three were not stamped with the Department of Agriculture stamp?

A. That is correct.

Q. One was stamped with a Department of Agriculture stamp, which was AA? A. Correct.

Q. The result of your inspection and candling of those eggs was that there were 73 AA eggs and 21 A eggs, is that correct?

A. Of that one case.

Q. On that one case, which was the only stamped case which you inspected?

A. That is correct.

Q. That made a total of 94 Grade A eggs?

A. Grade A or better.

Q. Pardon me? A. Grade A or better.

Q. Grade A or better? A. Yes.

(Testimony of Milton R. Evans.)

Q. Under the practice followed by the Army at that time, it is true, is it not, that if those eggs had been graded AA at the point of origin they would have been accepted at the point of delivery if they qualified as A eggs?

A. If it was stipulated in the contract permitting the dropping of grades.

Q. Wasn't that the usual provision of the contracts at that time?

A. That is true in regard to quality, but weight it was not. It is an under-weight grade.

Q. The subject matter of weights, in other words, as far as quality is concerned, leaving out the subject of weights, that stamped case of eggs would have been accepted in fulfillment of a contract to supply AA eggs?

A. Providing the contract permitted a drop in grade. Not all of them did.

Mr. Pratt: This relates, as I understand it, to a delivery to the Army. It is a hypothetical case.

The Court: Of these particular eggs that the report is confined to here. If you are confining it to the record, these eggs in the memoranda that the witness has mentioned——

Mr. Pratt: These are eggs which Major Evans inspected but the question is predicated upon the hypothesis that if they were delivered to the Army would they have been so and so. Is that right?

Mr. Faulkner: That is right.

Mr. Pratt: I object to that. It is not a matter of a [2529] delivery to the Army. This is a de-

(Testimony of Milton R. Evans.)

livery to the War Shipping Administration, and the Army rules are not relevant here.

Mr. Faulkner: I thought we threshed that out. The point is that even a greater latitude is in the Department of Agriculture than the instructions and rules covering the Army——

Mr. Pratt: No.

Mr. Faulkner: There isn't any question but the Department of Agriculture rule is much more favorable to the vendor than the Army rule.

The Court: Well, you can go in and develop it on redirect examination if there is any question.

Mr. Faulkner: Q. In respect to the weight of that particular case of eggs, did you weigh the flats and fillers?

A. They were included in the weight of the half case.

Q. Did you weigh them separately?

A. In this specific case I don't remember. We did on several occasions remove the eggs and weigh flats and fillers to satisfy the question in the minds of some bystanders as to how much the tare weighed.

Q. Isn't it a fact that the general weight on an average of flats and fillers when they are new is about 3½ pounds?

A. That is provided in our regulations that that was the way we weighed, and that was the way the Department of Agriculture weighed eggs, by deducting 3½ pounds as tare weight.

(Testimony of Milton R. Evans.)

Q. The fact is that second-hand flats and fillers do not [2530] weigh 3½ pounds, do they?

A. Well, that would depend on whether they had been in storage or not. They may absorb moisture and weigh more than that.

Q. The usual second-hand flats and fillers that you find in use during this period of time when they were difficult to get, the second-hand flats and fillers did not weigh as much as the new ones, did they?

A. I would not make that statement, because some of those became contaminated with adherent material which increased the weight, processing oil included.

Q. Now, what is the weight of a medium egg?

A. Of an individual medium egg?

Q. Yes.

A. The Department of Agriculture reported that that weighed not less than at the rate of 20 ounces to the dozen. That is the way we proceeded. That amounts to, I believe, around 1.66 ounces per egg.

Q. On the form that you have, on the reverse side of that there is a direction there, is there not?

A. It is not a direction.

Q. Major——

A. This is Army regulation. The back side of this sheet has nothing to do with the information placed on the front side.

Q. I just say that on the reverse side there is a

(Testimony of Milton R. Evans.)

direction for checking scales and testing weights of eggs, is there not? A. Yes, for the Army.

Q. I mean, I just want to identify the fact that there is a [2531] provision on this sheet of paper. That is correct? A. That is correct.

Q. And when you set your scale for the individual weights of eggs, for Medium eggs, you set your scale at 1.66, do you not?

A. No. The scale is set so the weight may or may not be Medium egg weight. It provides the information that if an inspector wants to check your scale and see if it is accurate, that the test weight should weigh 1.66.

Q. So that in the normal packing of eggs, you have seen eggs packed and candled in a plant?

A. Yes.

Q. You know it to be the fact that the method is for the candler to take the egg and if it breaks the scale for a Medium egg set at 1.66 they will put that egg in the Medium grade?

A. That is the customary practice, yes.

Q. Assuming that every egg had been weighed and broke the scale at 1.66, what would the total weight of a case of eggs be, of the eggs in that case be?

A. Well, I had that information recorded and multiplied. To do it in my head would be rather difficult. There is no provision for accepting eggs on that basis, however.

Q. I did not ask you that. I said, what will the weight of the eggs in the case be where the candler

(Testimony of Milton R. Evans.)

has weighed each egg according to the schedule or the factor 1.66, what will the weight of the eggs be?

A. May I have a pencil and a piece of paper? I have calculated that previously. I believe [2532] I have a note in my folder.

Q. Maybe if I give you the figure you may remember it.

The Court: Get your folder, if it is available.

Mr. Pratt: Is this it?

A. Yes.

Mr. Faulkner: Q. Have you got the calculation? A. Yes, I have determined——

Q. Just a moment. That calculation you made was made since yesterday, was it not?

A. That is correct.

Q. After I called your attention in court to the fact of the 1.66?

A. You, as I recall, never made a mention of 1.66 to me.

Q. It was at a meeting of the men on the Government side of the table, and that 1.66 was called to your attention, and you made your mathematical calculation?

A. I made it since that time.

Q. The answer is 37 pounds .3 of an ounce.

A. I determined it to be 37 pounds 4 ounces at the rate of 22 ounces per dozen, but, as I say, that does not apply to a case of eggs in any respect.

Q. How long has the weight of eggs, that is, Medium eggs, been 40 pounds to the case?

A. Well, since the promulgation of the depart-

(Testimony of Milton R. Evans.)

ment standards, at least beyond that; my memory wouldn't be accurate. I know the last issue which was dated July, 1942, I think, provided for that.

Q. Well, was the weight of Medium eggs under the rules of the Department of Agriculture 37½ pounds?

A. To the best of [2533] my knowledge they never were. They may have been prior to my contact with the egg industry.

Q. When did the Department of Agriculture commence the weighing of eggs, as distinguished from the weighing of individual eggs as part of their inspection?

A. Beyond the date of my memory; I don't know.

Q. Isn't it a fact, Major, that in the inspection of eggs, as well as in the candling, that the determination of weight by the Department of Agriculture was predicated upon individual egg weights until the early part of 1945?

A. It was not, not before 1945. It was based on a case weight of eggs, as well as individual egg weights in December, 1942, was the date of this.

Q. Is it not a fact that even though there was a rule or a regulation in effect relating to the method of determining weights that the matter of determining weight of cases did not commence until the early part of 1945?

A. Of determining the weight?

Q. Yes. Of the case before 1945?

(Testimony of Milton R. Evans.)

A. As I say, my knowledge started at the time the order was issued.

Q. Have you observed the Department of Agriculture weighing individual cases of eggs in the normal course of inspecting eggs in the years prior to 1945?

A. I do not recall having inspected eggs in the presence of the Department of Agriculture inspectors in which they weighed any eggs; for the Army we were obligated to, under regulations on the basis of the Department of Agriculture instructions.

Q. That case of eggs on the Cape Charles weighed, according to your calculation, 39 pounds, 8 ounces. That is correct, is it not?

A. That is correct.

Q. You made it 43 pounds and take 3½ pounds off and reach an answer of 39 pounds, 8 ounces?

A. Correct.

Q. That was on the assumption that your flats and fillers actually weighed 3½ pounds?

A. Well, no, that was not the assumption. It was based on a directive for the method of determining case weight of eggs.

Q. You followed that direction that told you to weigh cases by weighing half a case and deducting 3½ pounds from the total? A. Yes.

Q. That would be eight ounces under the weight of 40 pounds, the 40-pound weight, isn't that correct? A. Correct.

Q. It would be almost two and a half pounds

(Testimony of Milton R. Evans.)

over the weight required for individual eggs, isn't that correct?

A. If they were all the medium size for individual eggs.

Q. Yes.

A. There is no record outside of my calculation that that is what it would be.

Q. You weighed another case without inspecting it, on the Cape Charles? A. That is correct.

Q. You found the weight of that to be 40 pounds 4 ounces? A. That is correct.

Q. How many cases of stamped eggs were there on the Cape Charles? [2535]

A. There were 31.

Q. How many? A. 31, I believe.

Q. 31. The average weight of those two cases, I think, would be off the 40 pounds how much?

A. About two ounces, as I estimate it.

Q. Do you think, Major, that having in mind that you had 31 cases there, that those figures correctly portray the weight of the lot of eggs that were stamped by the Department of Agriculture?

A. Well, I have no way of considering it in any other light than that these were a portion of my sample lot, which, after all, is my assumption of the whole lot.

Q. Well, now, Major Evans, assume, if you will, that you were determining the weight of these eggs with the thought in mind by you to accept them or not, and the eggs had been tendered you and you found one case would be eight ounces under and

(Testimony of Milton R. Evans.)

the next case four ounces over. You would weigh the entire lot before you would send them back, wouldn't you?

A. I would weigh more cases than I did.

Q. In other words, all that was required in the next case to bring it up to the fulfillment of 40 pounds to the case would have been for the next case to weigh 40 pounds and 2 ounces, isn't that correct?

A. Well, that seems hypothetical in view of the fact that I have three other cases; I could determine it.

Q. Major——

Mr. Hippeli: Let him answer. [2536]

Mr. Faulkner: Major——

Mr. Pratt: Let him complete the answer.

The Court: Do you wish to complete your answer?

A. Well, I just stated that adds another case to something I don't have here. It is kind of hard to give an answer to that.

Mr. Faulkner: Q. That's right, so you can't give an answer as you sit there now as a witness, that the 31 cases of eggs that were received with the Department of Agriculture stamp wouldn't average 40 pounds to the case, can you?

A. I could not testify to what I had not actually weighed, myself.

Q. That's right. The next ship, I think it is in sequence, I am trying to take them that way so counsel for the Government will be able to follow

(Testimony of Milton R. Evans.)

and pick out the exhibits—you have a ship called the Gilbert Hitchcock? A. Yes.

Q. Oh, before I leave the Cape Charles, down under the heading, "Remarks," you have written here, "Grade: Small Grade B."

A. That is correct.

Q. That related to one case of stamped eggs and three cases not stamped?

A. No; it includes—as far as the net weight determination and size of two stamped cases, there are two stamped cases that were used, and for quality only one.

Q. In other words, out of four cases that were unstamped you used three of them?

A. Yes. [2537]

Q. And out of 31 cases that were stamped you used two of them? A. Correct.

Q. You reached a conclusion that it was a small Grade B egg, is that right?

A. Correct, as far as the whole lot was concerned.

Q. Before you wrote the words "Grade B" you first wrote the words "Grade A"?

A. It would appear that way from a correcting figure over the face of it.

Q. What grade were those eggs?

A. They would be graded Grade B.

Q. Major, a Grade B egg is not entitled to have 172 Grade A eggs in it, is it?

A. It may contain any number up to the amount that would be graded B or better.

(Testimony of Milton R. Evans.)

Q. There is no requirement on the part of the rule book to give the buyer of a Grade B egg 172 AA eggs, is there?

A. Not if that is what he was representing them to be. Maybe they will be included, because the Department of Agriculture standards say it will be Grade B or better.

Q. The grade that is required by a Grade B is there shall be at least 60 per cent Grade A eggs or better? A. No, it does not.

Q. What is it?

A. It will have 80 per cent of Grade B eggs or better.

Q. 80 per cent Grade B or better?

A. Correct.

Q. The Procurement Grade was 60 per cent Grade A or better?

A. Well, you understand, Procurement Grade only gives the grade, [2538] itself, A and B, in four classifications.

Q. When you reached a conclusion that these eggs, as reflected on your sheet, are Grade B, their correct classification under the rules of the Department of Agriculture——

A. With the exception of the inedible loss of——

Q. Leaving out the inedibles? A. Yes.

Q. Are any eggs as you classify them for the Department of Agriculture known as No. 2 Extra Wholesale Grade?

A. I would have to check the wholesale grades.

(Testimony of Milton R. Evans.)

I am not entirely familiar with the grades. I was grading on the basis of consumer grades.

Q. You were merely there to determine the quantity of particular eggs; then the balance was an expression of opinion of what they constituted as to a grade, isn't that right?

A. I imagine it could be construed that way. My purpose, as I understood it, was to determine the interior quality of these eggs and record that, and to estimate the grade according to the consumer grades of eggs.

Q. Why did you do that? Did somebody tell you to do that?

A. I was told that some at least of these eggs were invoiced, had consumer grades. I presume that would apply in its entirety. It makes provision for only Grade AA, A, B and C.

Q. You testified on your direct examination that these eggs were without grade, no-grade eggs.

A. I did.

Q. Even including the inedibles they have no grade? A. Not a consumer grade. [2539]

Q. You did not say that. You said they were no-grade eggs.

A. To the best of my knowledge, I testified under consumer grades they would be no-grade.

Q. In other words, your expression "Grade B" merely means that these eggs would qualify under your opinion as a Grade B egg?

A. That was the highest consumer grade I could give to them.

(Testimony of Milton R. Evans.)

Q. But that you did not intend to express an opinion that that was the correct grading of those eggs; am I correct?

A. In my opinion, the correct grade.

Q. You did not grade them according to the Department of Agriculture standards, did you?

A. Well, I gather that you have one standard and I have another. I have never in my experience been obligated to grade a wholesale grade of egg, so it wouldn't enter into my mind to consider eggs going to the armed forces to be sold as wholesale grades of eggs.

Q. We pass to the Gilbert Hitchcock. That was a ship involving some eggs which you have indicated were in quantity 55 cases. Is that right?

A. Yes.

Q. How many cases of eggs did you candle and inspect that bore a Department of Agriculture stamp? A. Three of them.

Q. How many eggs did you candle that did not bear a Department of Agriculture stamp?

A. Out of three cases——

Q. The total, then, was six? A. Correct.

Q. A little over 10 per cent, is that right?

A. That's correct.

Q. The number of cases of the entire lot which you examined [2540] which did not bear a stamp were how many?

A. Cases that I did not examine?

Q. See a stamp on.

(Testimony of Milton R. Evans.)

A. The total number I did not see a stamp on was 14.

Q. And the difference between the 14 unstamped and the 41 stamped, did you consider that, Major, a fair way to determine the grade of the entire lot?

A. Yes, I did.

Q. At the time you were down there, it was in the month of May, you knew, did you not, that certain eggs had been delivered at the waterfront from the firm of Nye & Nissen, or at least you were informed; were eggs in cases that did not bear an Agriculture stamp, were small eggs?

A. That is true.

Q. So that to determine the quality and the weight of the entire lot you selected three out of fourteen of the small eggs and three out of 41 of the Department of Agriculture eggs?

A. That is correct.

Q. In that method you were going to determine the weight of the entire lot and the quality of the lot? A. That's correct.

Q. It is your opinion that was a fair method of doing it?

A. It is, as far as inspection procedure goes, to inspect the cases that you see fit to select.

Q. If you as an Army inspector, were going into the plant of Nye & Nissen to inspect 55 cases of eggs to be drawn for you and there were different type eggs, you would draw samples from type A and you would draw samples from type B, and

(Testimony of Milton R. Evans.)

you [2541] would not combine the cases, would you?

A. You mean as far as representative——

Q. Yes.

A. I certainly would, because I am sampling a lot of eggs, not two lots of eggs, and I wouldn't reject a part of a lot and accept a part of a lot.

Q. If you went into the plant of Nye & Nissen and there were 200 cases of eggs on the floor, and it appeared to you 100 cases of eggs came from one source and 100 cases of eggs came from another source; you would proceed to inspect those two different types of eggs separately, isn't that correct?

A. I would attempt to get a representative, or make a representative examination.

Q. If you knew in advance there were two separate groups of eggs you would examine them separately?

A. No. It would all be on the report, in the same report, as one lot of eggs offered under one purchase order that is on the face of your report. For the purchase order number, we are required to make a separate report for each purchase order number.

Q. In respect to the Gilbert Hitchcock, it is true, is it not, there were in the three cases of eggs that bore a Department of Agriculture stamp 242 eggs which had a grade or quality at the time you saw them of A or better?

A. Well, I will have to add my figures. It is difficult for me to calculate these for you the same

(Testimony of Milton R. Evans.)

as for Mr. Pratt, since I graded these as an entire lot, not as individual cases. You say 242.

Q. That is what I got.

A. We come out even. [2542]

Q. Therefore, that lot of eggs was, if sold to the Army at that particular time, would be acceptable at the point of destination as Grade AA?

A. No.

Mr. Pratt: I object.

The Court: The witness says no. I will let the question and answer stand.

Mr. Faulkner: Q. That means an average of 80.6 of A eggs?

A. You asked me if they would be acceptable as AA. They could not, because there is a mixture——

Q. At the point of destination those eggs graded A, did they not?

A. Well; you have some inedibles in that.

Q. We are leaving out the inedibles.

A. They all should be left out.

Q. Mr. Pratt left them out.

A. I understand you want to know would the grade be acceptable on the lot?

Q. As AA eggs?

A. Provided they were all like the three cases with none of the others mixed in.

Q. Yes, the three cases that bore the Department of Agriculture stamp Grade AA.

A. If the purchase order had stipulated in it

(Testimony of Milton R. Evans.)

that they could be AA and A, we would have accepted it, of course.

Q. It was your practice to do that in April and May, 1944?

A. Well, the Army usually bought Procurement grades, we did not buy so many consumer grades.

Q. It was the practice of the Army in connection with Procurement [2543] grades and consumer grades to use the same thing in April and May, 1944, was it not?

A. If they were eggs that were shipped a certain distance, some distance; in carload lots, as I mentioned, they were permitted to drop more than they would in less-than-carload lots which were intended for local distribution. That was the purpose of the regulation that provided for vendors in the Middle West to sell the Army eggs, ship them to us here, and not be responsible for the normal deterioration that would occur en route.

Q. I will show you a purchase order of the War Department that relates to the sale and delivery from the plant of Nye & Nissen in Petaluma to the National Ice and Cold Storage Company in Petaluma for 18,000 dozen eggs? That would be 600 cases? A. Correct. It is a carload of eggs.

Q. That would be a distance, I assume, at the maximum, the length and breadth, whichever is the larger, of the City of Petaluma, and I will ask you if this language——

Mr. Pratt: Now, I object. This relates to some-

(Testimony of Milton R. Evans.)

thing that is not germane at all to the inquiry here. We are getting far afield.

Mr. Faulkner: The Major said this matter of the reduction in grades on the contract was to cover these midwestern shipments. I just wanted to show him to refresh his recollection that it covered all shipments. I can bring all the contracts in, if your Honor wants them.

Mr. Pratt: If it is a matter of Army orders, Army purchases, I will object to it.

Mr. Faulkner: I will withdraw the question.

Q. At all events on the Gilbert Hitchcock, providing a contract had that provision in, the cases that had a Department of Agriculture stamp on would have been accepted at the point of delivery as AA eggs, eliminating any question of weight?

A. The weight and the Inedibles.

Q. The weight and the Inedibles?

A. On the provisions in [2544] the contract.

Q. On the weight of the eggs that bore the Department of Agriculture stamp it is true, is it not, that each of those weights exceeded 37.3 pounds for the eggs?

Mr. Pratt: I object to that, if the Court please. The fact that it exceeded 37.3 pounds has nothing to do with the classification of eggs according to size as they were classified by this witness under the regulations of the Department of Agriculture.

Mr. Faulkner: Your Honor, the Department of Agriculture regulations are not statutes, and these sales occurred at a particular time. Millions of

(Testimony of Milton R. Evans.)

dozens of eggs were being sold. They were being sold, it is true, to various Government agencies, and there were rules and regulations in respect to that. But I think we are entitled to show that one of the rules and regulations was that individual eggs must weigh 1.66, and where a vendor of eggs, in the preparation of those cases, had a case of eggs each one of which would weigh 1.66, he is privileged to tender those eggs to the vendee. Then the vendee obviously would be in a position to reject the eggs or not as he pleased. But there is no requirement that those things be done by the vendor. In other words, the individual eggs are weighed by the inspector, they are weighed by the candler, and they are put in various cases, and a vendor of eggs like Nye & Nissen will make up cases out of one lot of [2545] ranch eggs of anywhere from twelve to twenty cases of different type eggs, and the egg candlers put the eggs on a 1.66 egg scale to determine if it is a Medium. Now, when that case is filled it goes out in the trade as a Medium. If Mr. Pratt here will say "We claim that every case like that constitutes a violation of law," there is nothing in the statute to indicate that at all.

Mr. Pratt: In the first place, there is no evidence upon which Mr. Faulkner's statement is based, no evidence in this case; and in the second place, when you consider the fact that there was a lot of Peewee eggs in each of these shipments of eggs that he is talking about, there is no application to the case anyway. But so far as this par-

(Testimony of Milton R. Evans.)

ticular question is concerned it is predicated upon something that is not in evidence. On the contrary, the witness stated that while a single egg might weigh 1.66, and if you multiply that by 360, the full number of eggs in a case, you would arrive at 37.3, or whatever it is, that is not the method of determining weights of eggs; they are done by the case and not by the individual egg.

Mr. Faulkner: There isn't any requirement that compels that. In other words, either the candler or the inspector is entitled to classify a case of eggs by weighing the eggs individually or he may weigh them by case.

Mr. Pratt: To the contrary. The question was propounded to the witness and he testified to the contrary. There is no [2546] evidence to support the statement made by Mr. Faulkner. None.

Mr. Faulkner: It is right on the reverse side of the paper he has in his hand.

The Court: I will allow the question. You may answer.

The Witness: It would exceed it. I believe I could clarify that a bit.

The Court: You may explain if you wish.

The Witness: As Mr. Faulkner described, the candler in candling will put the egg on a large egg scale. If it does not break that one, they will try it on the medium sized scale, and if it breaks that scale, pushes it down, that will go into the Medium, but in that range between the size Medium and the size Large will be some that are very close to

(Testimony of Milton R. Evans.)

being Large but still not sufficient for that class that counter-balances the minimum size from mediums, and of those the Department of Agriculture has provided that due to this tolerance individual eggs may weigh this light, but in considering a dozen, a single dozen of eggs out of this case, that dozen must weigh 21 ounces, which is heavier than each of the individual eggs would weigh. Then if that forms one light dozen in the case, they do not want all dozens to weigh the same amount, so they require the entire case to weight more than each of the individual eggs at the very minimum would weigh. I think that would clarify it on both sides.

Mr. Faulkner: I think it says, though, that taking a [2547] 20-ounce egg, whatever the weight, it should weigh 1.66.

The Witness: As I explained, Mr. Faulkner, this form was specified for the Army, and the Army found in buying so many eggs that little technicalities could come into the inspection which would eliminate a good lot of eggs, so they provided that we could buy eggs with an appropriate price adjustment. Say they had anything in excess of 3.3 percent of the eggs that were examined and weighed. If there was a percentage in excess of that we could still buy them and make a price adjustment for the difference in weight, and that is why the Army not only specified case weights but individual egg weights, because a case could weigh, for example, here, as Mediums, 40 pounds, and contain five percent of under weight eggs, and the

(Testimony of Milton R. Evans.)

Army makes a price adjustment and accepts it under both circumstances.

Mr. Faulkner: Q. On the Gilbert Hitchcock did you get the gross weight of the cases?

A. The gross weight of the cases?

Q. Yes. A. Not on this vessel.

Q. Did you weigh the fillers?

A. They would include it in the half-case of eggs, flats and fillers in one-half of the cases.

Q. Did you weigh them separately?

A. On the Gilbert Hitchcock I don't recall. I definitely recall one other vessel that we did though. [2548]

Q. Then on the first case of stamped eggs the weight was 40 pounds, 10 ounces, wasn't it?

A. That is correct.

Q. The next case was 39 pounds, 12 ounces?

A. That is correct.

Q. So if you averaged those two cases there would be no question that they weighed the minimum weight required for Medium eggs, is that correct?

A. They would barely make the weight.

Q. What?

A. They would barely make the weight, those two cases.

Q. In the next case you have written two figures?

A. I clarified that in the record yesterday. In reading it I read it incorrectly the first time as 37. Actually it is 38.

(Testimony of Milton R. Evans.)

Q. 38 pounds?

A. It is 38, if you will calculate it.

Q. Then in respect to the 41 cases you found that two cases averaged over 40 pounds and then you found a case that averaged under?

A. No, I found two cases that averaged under and one that was over.

Q. One over?

A. One over and two under out of those three, and then I found three others that were way under.

Q. 40 pounds, 10 ounces, 39 pounds, 12 ounces, and 38 pounds even?

A. Right. Yes, that is even.

Q. Pardon me? A. That is correct.

Q. That is the word "even"?

A. Even. [2549]

Q. Now, the average weight of all three would be what?

A. Well, sir, you got me. It would be 39 pounds and 9 ounces for all three, considering the fraction as the next largest.

Q. So that the weight under the 40 pounds weight on the average of those three is 7 ounces?

A. On those three, yes sir.

Q. Major, if in the instance of those three cases a claim was made by you that they were under weight I would be entitled to have the box and the fillers and the flats weighed, wouldn't I?

A. Not the box, just the flats and fillers, if you wanted an accurate determination.

(Testimony of Milton R. Evans.)

Q. You would weigh them and then determine the weight of your case, wouldn't you?

A. The difference would be the same. You would have to have some kind of container for your eggs to determine the tare weight on them. It is the only way we can weigh them.

Q. In other words, the purposes of all of this is to determine the weight of the eggs?

A. The weight of the eggs. That is all we are interested in.

Q. In the event the average weight of a second flat and filler was under three and a half pounds, those eggs would be forty pounds, wouldn't they?

A. No, I can't say that. I would have to take them out and weigh them to know. I would say in the majority of cases the flats and fillers will be heavier than that due to moisture. [2550]

Q. Is that your experience that secondhand flats and fillers will weigh more than new ones?

A. That is an opinion and not an experience. I have never weighed the two differently to determine it as a fact.

Q. On the SS. Phillipa you examined 65 cases of eggs. I think that your record shows 50 bore a Department of Agriculture stamp and 15 bore no stamp?

A. That is correct, sir.

Q. Thus at the time that you went on this ship, which was the 5th of May—oh, the examination of the cases shows that the Department of Agriculture stamp bore the date of April 27?

(Testimony of Milton R. Evans.)

A. Correct.

Q. That was well over a week before the date of your inspection; that is right, is it not?

A. Yes, that would be eight days.

Q. You had 65 cases there; 15 had no stamp, 50 did, and you determined to make a selection. How many cases of eggs with the Department of Agriculture stamp did you select?

A. I selected four.

Q. Four out of fifty, and then you selected three out of fifteen, is that right?

A. I only candled two. There is a seventh one there that I just weighed instead of candling. I selected two unstamped ones and four stamped ones. That is about the right proportion.

Q. In respect to the cases of eggs that bore the Department of Agriculture stamp, at the time you inspected those [2551] particular cases, eliminating the Losses, what grade were they at the time you inspected them? A. I will figure it out here.

The Court: What was that question?

Mr. Faulkner: What did they grade at the time of inspection.

The Court: What did what grade?

Mr. Faulkner: The cases of eggs stamped with the Department of Agriculture stamp.

The Court: Have you got a figure, Mr. Faulkner?

Mr. Faulkner: Yes, but the figure I have, Major, I have 78 AA's.

The Witness: Well, I was adding the A's and AA's together.

(Testimony of Milton R. Evans.)

Mr. Faulkner: Q. Does that amount to 295? Have you got that far? A. AA.

Q. A's and AA's?

A. I have done a little better than that.

Q. 295?

A. I have a little more than that. Perhaps I had better check them again.

Mr. Pratt: May I ask if Mr. Faulkner has taken into account the rotten eggs that were in these stamped cases?

Mr. Faulkner: We eliminated the Inedibles the same as you did.

Mr. Pratt: Very well. [2552].

Mr. Faulkner: We will cover that maybe to your satisfaction, Mr. Pratt.

The Witness: I come out with 290 this time.

Mr. Faulkner: 296?

The Court: 290.

Mr. Faulkner: Q. Well, the ultimate figure is the same anyway? A. Yes.

Q. You get 73 percent?

A. Yes, I will concede that, that is pretty close.

Q. 73 percent of Grade A eggs?

A. The AA and A.

Q. 73 percent? A. Yes.

Q. What grade would you give that at the time you inspected them?

A. Well, let's see. Outside of the Inedibles it would go as a good Grade A.

Q. Now, each one of those cases weighed, ac-

(Testimony of Milton R. Evans.)

cording to the weighing that you gave it at that time; in excess of forty pounds, did it not?

A. That is right.

Q. Now, you inspected some eggs on the Czechoslovakia Victory. None of the eggs bore a Department of Agriculture stamp, is that right?

A. The Czechoslovakia Victory?

Q. Pardon me? A. That is correct.

Q. There were 25 cases? A. 25 cases.

Q. And you examined three?

A. Correct.

Q. Do you remember whether those were in wood or fiber cases?

A. I had them shown as fiber used—used fiber cases. [2553]

Q. And all of them were in fiber?

A. That is the way I have them indicated here.

Q. And all were used?

A. Yes. The eggs marked out there had corrugated fiber.

Q. In any of the ships—the Phillipa—do you know how the eggs were packed, wood or fiber, in respect to whether the Department of Agriculture stamped eggs were in wood cases or fiber?

A. I couldn't testify as to the breakdown on those.

Q. Now, the next ship is the William Coulter and there were forty cases of eggs involved, and I think that there were six that you have marked "Not stamped"?

A. Correct.

(Testimony of Milton R. Evans.)

Q. The others were stamped May 4, 1944, is that right? A. That is correct.

Q. And your inspection was May 8, 1944?

A. On the 8th, yes sir.

Q. Pardon me? A. On the 8th.

Q. May 8, rather, four days later?

A. Right.

Q. All of those cases that you examined on that ship bore the Department of Agriculture stamp?

A. All those that I examined had the Department of Agriculture stamp. I didn't candle any of the ones that were not stamped.

Q. In that instance you found that they graded, having in mind that they were all United States Department of Agriculture stamped, that they all graded Consumer Grade B, is that right? [2554]

A. That is the highest consumer grade I could give.

Q. Eliminating the Inedibles?

A. That is correct.

Q. Now, there is a figure there. What is the addition on the original of the number of AA eggs, Major?

A. On the number of AA's? This figure?

Q. Yes. A. That is 70.

Q. 70? A. Yes sir.

Q. And 202? A. That is right.

Q. Grade A, is that right?

A. 202, that is correct. At least it is on this one.

Q. Those at the time of the inspection would

(Testimony of Milton R. Evans.)

not pass as Grade A eggs, would they, without devoting the time to get an exact computation?

A. That would have made 68 percent A and AA, and it would require 80 percent to make Grade A, so it would be a Grade B.

Q. That would be under at the time of the inspection a Grade A standard?

A. That is correct.

Q. Those eggs which graded as Grade B at the point of delivery would be accepted as eggs described as Grade A at the point of origin, isn't that correct, in the situation that I have described repeatedly in my prior questions?

A. If it were a carload lot, and the contract stipulated that they could drop to Grade B at destination, they would be accepted as Grade B by the Army.

Q. Weights of those cases each exceeded 37.3, isn't that correct? [2555]

A. 38 pounds, 9½ ounces was the determined average for the lot.

Q. The average of the four cases.

The Court: We will take a recess now.

(Recess.) [2555a]

The Court: You may proceed.

Mr. Faulkner: The last one was the William Coulter, Major. A. That is correct.

Q. Is that the one that we agreed in substance that we finished? Do you recall your computation on that?

A. Well, I make a total of 68.2 AA and A, I

(Testimony of Milton R. Evans.)

mean Consumer grade to be given that lot would be Grade B.

Q. Was that acceptable—I think the last one, was that acceptable as A at the point of origin under the circumstances that you have heard described in the previous question?

A. As A?

Q. Yes.

A. If they had been purchased as A and the contract stipulated they could be delivered as B?

Q. Yes.

A. If there was such a contract.

Q. Is the next that you have the Francis Parker? A. Yes.

Q. The shipment on the Parker includes 45 cases, 38 of which had a United States Department of Agriculture stamp, and of which you said 7 cases were not stamped? A. Correct.

Q. You did not examine any of the unstamped cases on this boat, did you?

A. The four we candled were all Department of Agriculture.

Q. Do you recall the date of your examination?

A. It was on the 4th of May.

Q. May 4th, five days before you candled and inspected them?

A. It was the same day they were delivered to the pier. [2556]

Q. Pardon me?

A. The same day they were delivered to the pier the candling was done.

(Testimony of Milton R. Evans.)

Q. Yes, but I mean the date on the Department of Agriculture stamp was five days before?

A. Yes.

Q. In that inspection there were 76.7 A eggs?

A. A or better.

Q. You have described the lot as slightly under Grade A, is that correct? A. Yes.

Q. Is that equivalent—that is an exact application of the definitions of a Grade A and Grade B—you would have to define those as a Grade B, would you not? A. Yes.

Q. Again, of course, out of 400 eggs that you examined, how many, to make this picture clearer, when you reach a conclusion that there were 76.7 eggs Grade A or better, how many eggs which you classified as B or C would have to be classified as A to make an 80 percent mark, how many eggs would be involved?

A. Well, we would have eggs placed in two columns——

Q. Well, we are dealing in terms of 400 eggs that you looked at, how many more eggs would you have had to classify as A or AA in order to bring that up to 80 percent?

A. Well, that is a basis of a sample, of the samples we have picked. They represent the rest of the lot, so we presume that the rest of the lot would come out in the same——

Q. No, I don't mean that. We are dealing with facts. We are dealing with eggs. There were 400 eggs you looked at. You found so many eggs

(Testimony of Milton R. Evans.)

were AA and so many A. I merely want [2557] you to translate in eggs the difference between 76.75 percent and 80 percent; do it in terms of eggs.

A. I see what you mean. On that hypothesis you take the percentage of these here, multiplied by the number of cases looked at, and that would be 13½ or 14 additional eggs.

Q. Is it not a fact that experience in the egg business shows that candlers and inspectors, the ordinary candler and inspector will differ in his judgment, expert, I mean, on an average from 11 to 14 percent?

A. Well, the Army set acceptable standards as plus or minus 5 percent. One man will candle 85, another man conceivably may say 90, and another man may go 5 under that, to 80. And they will be within 5 percent. In this case, had we had just 13 or 14 more eggs, that would still only make it Grade A rather than AA.

Q. That is plus or minus 5, that is a 10 percent spread? A. 5 in each side.

Q. I said 11 to 14, your Army calculation reads 10. The application of that principle to the eggs involved in this instance would have cleared you, if you took the plus side of A eggs, wouldn't it?

A. Without the inedibles they would, except for weight.

Q. Eliminating the weights. The weights there in each instance were—the average of the weight was 39 pounds 6 ounces.

(Testimony of Milton R. Evans.)

A. This is the vessel I referred to, by the way, that we [2558] weighed the flats and fillers and we removed the individual eggs as well as the individual case.

Q. You removed the individual eggs and the case?

A. Yes, but I don't remember those weights.

Q. You weighed the case, do you know what that gross weight was?

A. No. I mean each of the individual eggs, every one of them was weighed on the individual eggs scale, and each of the sample cases was weighed by the half case by the example that I gave to the jury a while ago, where you had under-weight eggs and you could still have the case under weight. There were eight eggs in one case that didn't hit the 20 ounces, and yet that case still weighed less than 40 pounds. The next one, 12 only out of a hundred that were under weight, yet that case was under 40 pounds and so on, the same for each one.

Q. Yes. Where are those figures?

A. On the side of the page.

Q. Under the "shortages"?

A. Yes. Excuse me.

Q. In other words, this is an instance where you use the individual egg scale for both parts. Is it the only instance where you did that?

A. I believe there is one other one here where I reported that—yes, the Cape Breton, there.

Q. We haven't reached that, yet.

The Court: No.

(Testimony of Milton R. Evans.)

Mr. Faulkner: Q. At all events, regardless of the grade, the first case was 21 pounds 3 ounces, the second 21 pounds 8 ounces, the third 21 pounds 9 ounces, and the fourth 21 pounds 8, [2560] and you doubled that and took off 3½ pounds for tare?

A. I did.

Q. And 3½ pounds was the hypothetical deduction that was laid down in that rulebook?

A. Yes.

Q. It is on that basis that you expressed the opinion that these eggs were 39 pounds 6 ounces?

A. Yes.

Q. Now, the next ship is the Mission San Diego. I think it was an examination by you on May 11th.

Mr. Pratt: What is this boat?

Mr. Faulkner: The Mission San Diego. In that instance, one of the—there was a small quantity involving 10 cases? A. Correct.

Q. You picked two cases?

A. That's right.

Q. None of them were stamped with a Department of Agriculture stamp? A. No.

Q. You found that there were 64 percent A's, 23 percent B, 2½ percent C, 7 percent U. S. Light Dirties, 2 percent U. S. Dirties, the U. S. Checks were ½ of 1 percent, and there was one Inedible egg in the two cases? A. Yes.

Q. You reached the conclusion that you have expressed here, U. S. Consumer Grade B.

A. Yes.

(Testimony of Milton R. Evans.)

Q. Will you give us a description, Major of what is meant by a Dirty egg?

A. Well, the description of the Department of Agriculture is an egg whose shell has more than one-eighth of the surface of that egg that is more than slightly stained, [2560] slightly soiled, slightly dirty or one which has less than the surface, one-eight of the surface slightly stained, soiled or dirty, has adhering dirt, or interior quality of less than Grade B.

Q. What is the difference between the Light Dirty and the U. S. Dirty?

A. Well, the difference is that a Light Dirty, if if has the required interior of Grade B or better but does not have more than one-eighth of the surface slightly stained, soiled or dirty may be classified as a U. S. Light Dirty.

Q. In other words, any markings of the surface of the egg, the shell of the egg, however caused, if one applied literally and exactly the letter of the regulation, would entitle classifiication as Dirty or Light Dirty, providing the area is more than one-eighth of the surface?

A. There is no question that if it is more than one-eighth it meets the description as a dirty; if less than one-eighth provided it has the interior quality and no loose and adhering dirt it would be a Light Dirty.

Q. Light dirty?

A. Less than one-eighth.

Q. Less than one-eighth.

(Testimony of Milton R. Evans.)

A. The Department of Agriculture employs the description of a Light Dirty to the point that when the soiled proportion is less than one-eighth of the surface and if it does not detract from the appearance of the pack it will be ignored by the inspector.

Q. Then it will be ignored in practice, but it is not ignored [2561] in the rule, is it?

A. Well, it is specified. I am attempting to quote the Department of Agriculture regulations on the point.

Q. Those were not Department of Agriculture eggs, according to any stamp? A. No.

Q. The next ship is the Cape Breton: There were 45 cases of eggs involved. They were inspected by the Department of Agriculture according to the stamp——

A. Fourth of May.

Q. And they were inspected by you on the 11th of May? A. Correct.

Q. Having in mind they were all Department of Agriculture eggs that you inspected, the eggs graded as A or better in excess of 83 percent?

A. Well, I have one sample there that was not covered by the Department of Agriculture stamp, including that with the other there is 45.7 AA, 37.7 of A's—the case without the stamp will not detract from those figures here, and it has more AA's than the other case.

Q. Major, I was trying to make a short cut. On the bottom of the page, the average AA egg in the lot was 45, is that 45.7? A. Yes.

(Testimony of Milton R. Evans.)

Q. The average A egg is 37.7? A. Yes.

Q. That is 83.4 percent. A. Yes.

Q. So that lot of eggs as is, regardless of the consumer, would grade A at the point of examination. Eliminating the Inedibles, and I think there were 1.2 percent—— A. Corect. [2562]

Q. Can those eggs, if delivered to the Army after they were graded A at the point of delivery, have been accepted as eggs AA at point of origin under the circumstances which we have heretofore referred to? A. Hypothetical, you mean.

Q. Well, I have not been hypothetical. I have been precise; under the circumstances as they existed between the Army and the vendor in May and April, 1944, could those have been accepted as Grade AA eggs at the point of origin?

A. No.

Mr. Pratt: I object to the question on the ground it is hypothetical.

The Court: The witness answered no.

Mr. Faulkner: Q. Under what circumstances would they be accepted as AA eggs at the point of origin in April and May, 1944——

A. The reason I thought that was hypothetical is now you have 45 per cent Grade A. There is no way to assume that yesterday or two days, or whenever it might have been, that there were ever any more than AA's there. If they were kept under good refrigeration there may have been more AA's two days ago than now. That is what I meant by hypothetical. Do I make myself clear?

(Testimony of Milton R. Evans.)

Q. Not to me, Major.

The Witness: You say if they were Grade A now they would have been accepted for AA at origin. That is not a fair deduction, on this ground, that even though they have 45 per cent AA now, there is nothing to indicate they may have contained [2563] more than 45 per cent—I am arguing, excuse me.

Q. Major, isn't it a fact that the reason behind the Army—the largest buyer of eggs in the world in 1944 was the United States Army, wasn't it?

A. I expect that is correct.

Q. The reason that they provided that the vendor of eggs who had an inspection at the point of origin was entitled to fill the contract the point of destination one grade lower was that it was the consensus of opinion in the egg industry that the egg would deteriorate one grade lower in the lapse of time from inspection at origin to inspection at destination, isn't that right? [2563-a]

A. Well, in part it is. I had occasion to discuss the inspection reports at origin and destination with a great many people on many eggs that were shipped from the Middle West to the West Coast, and I think all the people agree the eggs would take, are going to take a beating in a freight car in war time and would on the average drop in quality in a trip across the country. That would not cover the local dealer. That is for what was termed a car lot dealer, not a less than car lot

(Testimony of Milton R. Evans.)

dealer. A less than car lot dealer would be a local dealer.

Q. It is true, is it not, that although a U. S. Procurement Grade is not identical with a Grade AA egg, that the difference between the U. S. Procurement Grade egg and No. 1, and a U. S. Procurement No. 2 is almost the equivalent as that between an A egg and a B egg? A. No.

Q. What is the difference?

A. The graduations of the Procurement 1, 2, 3 and 4 are even gradations between Grade A and Grade B. The Army provides for long distance hauling, carload lots, a drop from A to B. That is a whole grade. In less than carload lots they will drop one Procurement Grade, which would be only one-fourth of the difference between A and B.

Q. Where is that found?

A. That is in our regulations.

Q. Whereabouts?

A. I have many of them.

Q. I have tried awfully hard to get those regulations here in [2564] court. Can you give me the number of the regulation?

A. Well, in the course of my business I had a complete, full copy of regulations. I can't quote you—I don't know, I may be misspoke in saying it was a regulation. Possibly it is merely a directive.

Q. In the Department of Agriculture definitions of "Procurement Grade 1," what is the difference between a Procurement Grade 1 and the Grade A egg? A. They are identical.

(Testimony of Milton R. Evans.)

Q. All right. Is it not a fact that in the sale of Procurement Grade eggs the United States Army provides by contract that the grade Procurement 1 could drop to Grade B?

A. In carload lots across the country.

Q. Only in carload lots? A. That's right.

Q. Across the country?

A. Well, I made a mistake there in saying the direction of carload lots. They were permitted to drop in one grade in local dealers' less than carload lots, one Procurement grade, which is one-fourth of the difference——

Q. In delivering from San Francisco to Sacramento, how much of a grade would the Army permit Procurement 1 to drop to?

A. It would be dependent on what was stipulated in the contract.

Q. In other words, it would depend upon the stipulation in the contract. What was the particular stipulation in the contract that was used by the Army in April and May, 1944, in respect to the delivery of eggs in a distance as short as San Francisco to Sacramento that permitted a drop, if you know? [2565]

Mr. Pratt: I object to that on the ground it is not germane to this inquiry at all, what happened as to the Army contracts, what was usual with the Army contracts. I think it is entirely improper.

The Court: Q. Are you able to answer that question?

The Witness: A. It is an appendage that is

(Testimony of Milton R. Evans.)

mimeographed on the second page of all purchase orders issued by the Quartermaster Market Center on the purchase of eggs, and it provides, I believe, that where Procurement grades of eggs are purchased they may drop one Procurement grade between origin and destination. That is contracts issued for local installations to haul material as you described from here to Sacramento.

Mr. Faulkner: Q. Was it not ordinary to drop from Procurement Grade 1 to Grade B?

A. I would say yes, for a short distance like that. That would depend on the weather——

Q. The drop from Procurement Grade 1, which is an A egg, down to Grade B, was a full grade, was it not?

A. Now we are getting our terms confused. There isn't such a thing as Procurement A and Procurement B.

Q. What?

A. There isn't such a designation as a Procurement A and a Procurement B.

Q. Major, isn't it a fact that the United States Army in the ordinary contract relating to deliveries of eggs in this area in May and April of 1944 provided that a Procurement Grade 1, which is the equivalent of a Grade A egg at the point of origin, [2566] would be accepted if it graded Grade B at the point of delivery?

A. Not in less than carload lots.

Q. But it did not have to be delivered in a carload, did it?

(Testimony of Milton R. Evans.)

A. I don't believe I understand what you mean.

Q. Well, I mean if you took them from the Nye & Nissen plant out here on Missouri Street down to the National Ice and Cold Storage Company and you got a quantity of 600 cases of eggs, they would be in carload lots, wouldn't they?

A. They would be considered a carload.

Q. But you take them over there in a truck?

A. That is correct, on a short haul you would do that. If you were going to Sacramento you could not afford to bring them down.

Q. When you say in carload lots do you mean it is the quantity or the method of transportation that controls the terms of the contract?

A. The term is used to indicate lots of eggs that are going to travel. In other words, a carload lot won't be loaded up for a short haul delivery.

Q. In other words, quantities in carload lots that are going to travel some distance?

A. That is right. That provides for a whole grade drop, and it is considered for local deliveries a quarter grade drop.

Q. On the Cape Breton the weight of the eggs—I think we covered them—average 83-4. Now, I understood you to testify on this subject a moment ago that the fact that there was 183 AA eggs on the 11th of May, the date that you looked at them, that that is indicative of the number of eggs at a different time. You made some mention on the subject that that figure would not vary. I understood you to, anyway.

(Testimony of Milton R. Evans.)

A. No, I did not intend to convey that information, but you put a question to me that is not a fact, that since the two grades combined totals more than 80 per cent, that it grades Grade A at destination, that it would have graded AA at origin; am I right in putting it that way?

Q. Yes.

A. I say that would not be anything but a hypothetical case because even though there are 45 per cent AA's now, they may have still only had that many yesterday and the day before.

Q. But, Major, the whole thing is hypothetical, isn't it? The whole story from beginning to end is hypothetical, that the grade that you found on the waterfront had some relation to the grade at a prior time, and it is all hypothetical, isn't it, every bit of it?

A. I can state that the date I saw these eggs, this is the way they graded.

Q. And that was your opinion at that time?

A. That is correct.

Q. And you were making an examination in respect to a matter being investigated by the Department of Justice, and you had no evidence there to check your findings, did you?

A. On, I believe, two different occasions another Army officer candled the same lot of eggs with me and we agreed very closely. [2568]

Q. Which of these cases that you have testified to today? There is the Cape Charles, the Gilbert Hitchcock, the S8 Phillips, the Coulter.

(Testimony of Milton R. Evans.)

A. I have a record here of Colonel Hand being present.

Q. Who? A. Colonel Hand.

Q. In which case? A. On the Coulter.

The Court: The Coulter?

Mr. Faulkner: Q. The Coulter?

A. Yes sir.

Q. Any other? A. Not that I have here.

Q. So that in the nine cases that you mentioned in a matter where you were brought in to determine a certain fact or to give an opinion on a certain fact that related to an investigation, in eight of those instances there was no one there to corroborate your findings, isn't that correct?

A. Excepting the agents to the extent that the inedible eggs that I broke out, it was obvious to them as well as to myself that they were inedible eggs.

Q. In the matter of candling eggs at an egg plant and inspecting eggs at an egg plant, it is a fact, is it not, that when the Department of Agriculture examined a case of eggs and finds three cases out of, say, a 50-case lot, if they found two inedible eggs they would just throw them in the ash barrel, wouldn't they? Isn't that the practice?

A. I couldn't testify as to their methods. Their regulations [2569] do not permit any inedible eggs.

Q. You would do that, wouldn't you?

A. We have been directed that we would not reject a lot of eggs for the presence of one inedible in the lots that were inspected. We would dispose

(Testimony of Milton R. Evans.)

of it rather than reject an entire lot on the basis of one inedible egg.

Q. In other words, your deviation from the written letter of the regulation was a very limited one, is that right?

A. It was prescribed in writing by our gentlemen in Washington.

Q. In actuality, if you had an instance where you had 60 cases of eggs and you examined three of them and you found three inedibles, one in each case, how would you handle that situation?

A. I wouldn't accept that lot because it presumes in the balance of the eggs there is the same percentage, which would make in each case—you say one egg in each case, that would make a total of three and a half eggs in each case, since I only looked at one hundred of the eggs out of each case.

Q. At all events, if you found one in each case you would turn down the whole lot?

A. Yes, because that would be one per cent and I could not assume authority to accept that.

Q. On the subject of what you found on the 11th of May do you know——

A. Are you talking about the James Oliver?

Q. No, the Breton. Do you know of your own knowledge what these eggs on the Cape Breton graded on the 4th of May?

A. On the 4th of May I do not. [2570]

Q. You did, however, see on certain of those cases a stamp of the Department of Agriculture that they graded AA, is that right?

(Testimony of Milton R. Evans.)

A. Yes sir.

Q. Now, on the James Oliver I think there were eight cases involved. You examined two of these, and these I think are what you have referred to as small eggs. None of them were marked by the Department of Agriculture? A. That is correct.

Q. Now, what is the weight, the minimum weight per dozen for a small egg?

A. The minimum weight per dozen for a small egg is 18 ounces.

Q. And what is that particular individual egg, do you know?

A. The weight is prescribed for the individual egg at 15 ounces per dozen, per individual egg.

Q. Do you remember in connection with the William Coulter, were the eggs that were involved in that case in fiber or in wood that you inspected?

A. The Coulter, I have a mixture of both wood and fiber used containers.

Q. That was the entire lot, wasn't it?

A. That is correct.

Q. What were the type cases of eggs that you inspected?

A. I have made no record of which was which.

Q. Have you any recollection on the subject?

A. I do not. They were all used containers.

Q. They were all used?

A. That is right, previously used.

The Court: It is now fifteen minutes to four o'clock. [2571] Is there any hope of getting through with this witness this afternoon?

(Testimony of Milton R. Evans.)

Mr. Faulkner: Yes sir, so far as I am concerned there is.

Mr. Pratt: I do not think there is, and I am sorry, too, because the Major wants to go home to Los Angeles.

The Court: Well, it won't hurt him at all to stay over a couple of days.

The Witness: Sir, I have a wife and three boys down there. I have lived in San Francisco for almost four years and it is a very nice place. But I like Southern California.

The Court: Anybody who has three youngsters will have to get into an arguiment with someone else and not with me.

Mr. Faulkner: You should bring the boys up here.

The Court: He said they were here for four years. All right, proceed.

Mr. Faulkner: May I have Exhibit 69?

Q. In connection with the William Coulter——

The Court: Maybe if you will cut your examination short, Counsel will be able to get through with this witness. Those three youngsters he is talking about rather appeal to me: if there is any hope of getting him back there, I will help him.

The Witness: No, sir, I do not want any special consideration, if it takes up everybody else's time.

The Court: I do not blame you for wanting to get back to those three youngsters. Proceed now and we will conclude and [2572] send him back to Los Angeles.

(Testimony of Milton R. Evans.)

Mr. Faulkner: Mr. Pratt said he could not send him back.

The Court: I will send him back.

Mr. Faulkner: Q. Major, was your method of weighing the cases on the William Coulter typical of your method of weighing cases on all of these ships?

A. In one case it was. In the others, no.

Q. What do you mean by that?

A. In one case I weighed the half-case of eggs with flats and fillers. The balance of them was determined by weighing the entire case, that is, eggs, flats, fillers and case, and deducting 12 pounds for the net weight of the case.

Q. Now, I will show you Exhibit 69 for Identification and ask you if you have ever seen that document before?

A. I may have seen it at the time. I don't recall. There is nothing there to identify it.

Q. Isn't that a document that is the joint product of the action and the mind of you and Colonel Hand prepared at the time you were weighing the cases of eggs on the William Coulter?

A. Well, as I recall this was recorded by Colonel Hand.

Q. You and Colonel Hand worked on that ship together, didn't you? A. Yes sir.

Q. Now then, there are four cases of eggs that bore a Department of Agriculture stamp where the gross weight was taken, [2573] isn't that correct, according to that document?

(Testimony of Milton R. Evans.)

A. Where the gross weight was taken?

Q. Yes.

A. Three—as far as this one, you mean?

Q. Pardon me?

A. My record or this one?

Q. You recognize that as Colonel Hand's handwriting, don't you? A. Yes, I do.

Q. And you recognize it as a record of an action that you and Colonel Hand took on that boat, do you not?

A. It obviously is—the name of the vessel, the date.

Q. You weighed the eggs? A. Yes sir.

Q. And you took the gross weight of the cases, too, didn't you, on the William Coulter?

A. Yes sir.

Q. Now then, what is the weight of an ordinary fiber case, flats and fillers, without any eggs in them?

A. As I recall, not having used that very frequently as a method of determining the weight, that that runs probably around—a solid fiber case, do you say?

Q. Yes, ordinary fiber cases, solid fiber?

A. Solid fiber?

Q. Yes.

A. Probably run around 11 or 12 pounds.

Q. Isn't it a fact that a solid fiber case with flats and fillers will run between 8 and 9 pounds and will not exceed 9 pounds?

(Testimony of Milton R. Evans.)

A. Well, that is a fact that would have to be determined.

Q. Pardon me?

A. I don't have a distinct recollection. I remember that that very subject came up between myself and [2574] Mr. Menges at one time and we tested it, but I do not remember the figures.

Q. Well, the gross weight of the four cases of eggs that had the Department of Agriculture stamp that was taken at the time that you were inspecting and examining eggs on the William Coulter was as to one 49 pounds and 7 ounces, as to another, 50 pounds and 5 ounces, as to another, 51 pounds and 9 ounces, and as to the fourth, 52 pounds and 7 ounces, isn't that correct.

A. With the exception of the first one you mentioned.

Q. 49.7—is that wrong? I thought it was 49.7.

A. Are you looking at this one?

Q. Yes, that is the gross weight of the cases. 49.7 for one? A. Yes sir.

Q. 50.5 for the other? A. Yes sir.

Q. 51.9 and 52.7? A. Yes sir.

Q. That is correct, isn't it? A. Yes.

Q. And you participated in the transaction in which those cases were weighed, isn't that correct?

A. That is right.

Mr. Faulkner: May I have AO for Identification, the Gilbert Hitchcock?

Q. Will you direct your attention to your findings on the Gilbert Hitchcock?

(Testimony of Milton R. Evans.)

A. Yes sir. I have it here.

Q. In your findings on the Gilbert Hitchcock I think you translated the figures there on the eggs inspected by the [2575] Department of Agriculture and they were agreed on the figure 80.6 of A eggs. I will show you a certificate issued by the Department of Agriculture relating to an examination of eggs classified as U. S. Grade AA, in which on the examination of five cases of eggs the Department of Agriculture classified 87.6 per cent as AA, and 10.4 per cent as A eggs. Directing your attention to that sheet, Major——

The Court: Exhibit what?

Mr. Faulkner: Defendants' Exhibit AO for Identification.

Q. What date did you make your inspection?

A. On the first of May.

Q. On May 1? A. Right.

The Court: What is the date of this inspection that you refer to?

Mr. Faulkner: This one? It is dated here, your Honor, May 1, but I do not know if that is the date of the certificate or the date of the inspection. That is what I am looking for.

The Court: In order that they may look up the records, it is obvious that we won't be able to get through this afternoon with this witness. Is there something that a juror had in mind that he wanted to address the Court?

A Juror: For myself personally and the few jurors I have talked to, if there was any hopes of

(Testimony of Milton R. Evans.)

getting through in a reasonable time so he might return to his family, I am quite satisfied we would be willing to carry on a reasonable time. [2576]

The Court: Very well. You may proceed, gentlemen. We will do that very thing.

Mr. Faulkner: Yes, your Honor. Your Honor asked me a question of the date of the inspection. I can't tell what date is on the stamp.

The Witness: My notations show the 29th of April was the date of the inspection stamp.

Mr. Faulkner: The certificate, your Honor, is date May 1.

Q. How many Grade AA eggs——

Mr. Pratt: I object to the interrogation in the light of this document because it is perfectly obvious from an examination of this document that it is not the certificate and does not relate to the stamp that was on these cases examined by this witness, because he has testified that the stamp on the cases, the Department of Agriculture stamp, bore the date of April 29, and this egg grading certificate bears the date May 1. It is just a situation where the two do not fit. This certificate does not relate to the eggs that were in those cases. Therefore I object to his testifying or examining the witness with regard to the results of the candling by the inspector who candled them on May 1.

Mr. Faulkner: These are Government records produced by the Government, your Honor, and these are part of the records of the shipping company that the Government took possession of [2577]

(Testimony of Milton R. Evans.)

and we marked for identification, and each one of them has a statement here on the top—I will get the original one because I can read it better—"This certificate is receivable in all courts of the United States as prima facie evidence of the truth of the statesments therein contained." That is on the certificate itself.

Mr. Pratt: Those are not eggs that went on the Gilbert Hitchcock.

Mr. Faulkner: The date of the certificate is the date that they sent it to them. Those things could be cleared up later. This is the certificate for the Gilbert Hitchcock that the shipping company paid for.

Mr. Pratt: That is not true.

Mr. Faulkner: Mr. Pratt should not say that. I know what happened, but it is not for me to do the testifying. We requested each of these certificates in open court and they have been produced from envelopes of the Department of Justice agents. They came out of the files of the shipping companies.

The Court: Take it up with Counsel and see if you can agree on what this document is.

Mr. Faulkner: We had a stipulation, your Honor, that those documents—that no objection at any time would be made that those are copies instead of the original. We have that in open court, and it is part of this record.

Mr. Pratt: That is a copy of an egg grading certificate [2578] that came from the office of, I